

**Town of Belmont
Inclusionary Housing Zoning Rules and Regulations**

DRAFT January 7, 2009

A. AUTHORITY

The Board of Selectmen adopted these Rules and Regulations pursuant to the Town of Belmont Zoning By-Laws, Section 6.10.7 (1) concerning Inclusionary Housing (Section 6.10) and affordable housing requirements for Cluster Developments (Section 6.5.3). If any requirement of these Rules and Regulations conflicts with a provision of the Belmont Zoning By-Laws, the latter shall govern. These Rules and Regulations shall take effect on January __, 2009.

B. APPLICABILITY

These Rules and Regulations shall apply under the following circumstances:

1. Wherever the Inclusionary Housing Zoning provisions of Section 6.10 of the Zoning By-Laws are pertinent to a development project. In particular, these Rules and Regulations shall apply to all residential developments that involve the creation of seven (7) or more Housing Units. As set forth in detail in Section 6.10.6 of the Zoning By-Laws, in any such project, the seventh Housing Unit and every third unit thereafter shall be an Affordable Housing Unit; except that beginning with the 22nd unit, that 22nd unit and every fourth unit thereafter shall be an Affordable Housing Unit. Nothing herein shall preclude any developer from providing more Affordable Housing Units than required under the Inclusionary Zoning By-Law.
2. Wherever the affordable housing requirements under Section 6.5 of the Zoning By-Laws are pertinent to a cluster development project. In particular, these Rules and Regulations shall apply to all cluster developments that involve the creation of five (5) or more Housing Units. As set forth in detail in Section 6.5.3 of the Zoning By-Laws, in any such project, the fifth Housing Unit and every third unit thereafter shall be an Affordable Housing Unit; except that beginning with the 23rd unit, that 23rd unit and every fourth unit thereafter shall be an Affordable Housing Unit.

Projects may not be segmented to avoid compliance with these Rules and Regulations.

C. DEFINITIONS

These Rules and Regulations may contain terms not defined below. Where those terms are defined in the Zoning By-Laws, those definitions are hereby incorporated herein by reference.

Application - Application for a special permit under these Rules and Regulations.

Applicant - A person submitting an application with the approval and endorsement of the land owner.

Affordable Unit Ratio - The formula for determining the number of Affordable Housing Units required to be provided pursuant to the Zoning By-Laws

Belmont Housing Trust - The Belmont Housing Trust, Inc. established pursuant to Chapter 126 of the Massachusetts Acts of 1999 and subject to its own by-laws adopted February 10, 2004.

Cash Contribution - A payment-in-lieu of providing required Affordable Housing Units as allowed pursuant to the Zoning By-Laws

Comparable Unit - When used with respect to quality, character, and room size, means that there are sufficient features in common between the Affordable Housing Unit and the market rate unit so as to render the units similar in nature. Moreover, while the actual design or finishes provided in the Affordable Housing Units versus the Market Rate Unit may differ in a non-material fashion and still constitute comparable units, the same amenities proposed for the Market Rate Unit must be provided for the Affordable Housing Units, including without limitation full kitchen, full bath, and parking. Further, the actual room size for the Affordable Housing Unit may not differ in any significant manner to that of the market rate unit.

Notwithstanding the foregoing, when used with respect to external appearance, location and bedroom distribution, means that the external appearance of the Affordable Housing Unit and the market unit must be so similar in nature so as to render them indistinguishable while the location of the Affordable Housing Units and the bedroom distribution of such units must be no different from that of the Market Rate Unit.

Development Area - the whole area of a parcel or parcels of land under one ownership, notwithstanding that such parcel(s) of land are separated from the remaining portion of the parcel(s) of land by a street.

Fractional Affordable Unit – That fractional portion of an Affordable Housing Unit based on the numeric calculation of required Affordable Housing Units pursuant to the Zoning By-Laws.

Market Rate Units - Dwelling units available to the general public on the open market, without price restrictions or consumer income limitations.

Median Sale Price - The current Median Sale Price for an equivalent Market Rate Unit determined, with consideration given to the changing nature of the housing market, on a Project-by-Project basis by the Zoning Board of Appeals, in consultation with the office of the Belmont Board of Assessors.

Mixed Use Project - A Project consisting of some combination of commercial floor area and residential (dwelling) units.

Project - A Project subject to Section 6.10, Inclusionary Housing or 6.5, Cluster Development of the Belmont Zoning By-Laws.

On-site - Located within the Development Area.

Rules and Regulations - Rules and Regulations relative to the administration of Section 6.10, Inclusionary Housing of the Belmont Zoning By-Laws.

Sale of Life Estate Unit – Affordable Housing Unit available for sale and sold pursuant to Section 6.10.2 (3) a.

Town Counsel – Belmont Town Counsel.

Zoning By-Laws - The Zoning By-Laws of the Town of Belmont, Massachusetts.

D. AFFORDABLE HOUSING UNITS

Due to the limited availability of land and sites in Belmont, Applicants are strongly encouraged to incorporate the required Affordable Housing Units into the Project On-site. Where inclusion of Affordable Housing Units On-site is demonstrated to the satisfaction of the Zoning Board of Appeals not to be economically feasible, in accordance with Section 6.10.6 (2) of the Zoning By-Laws, consideration will be given to either:

- Provision of the required Affordable Housing Units off-site on an alternate site or sites; or
- Payment-in-lieu as provided under Section G below.

1. Number of Affordable Housing Units Required

A. Inclusionary Housing Projects

Number of Required Affordable Housing Units – Inclusionary Housing					
Unit	Type	Unit	Type	Unit	Type
1	Market	11	Market	21	Market
2	Market	12	Market	22	AFFORDABLE
3	Market	13	AFFORDABLE	23	Market
4	Market	14	Market	24	Market
5	Market	15	Market	25	Market
6	Market	16	AFFORDABLE	26	AFFORDABLE
7	AFFORDABLE	17	Market	27	Market
8	Market	18	Market	28	Market
9	Market	19	AFFORDABLE	29	Market
10	AFFORDABLE	20	Market	30	AFFORDABLE

B. Cluster Development Projects

Number of Required Affordable Housing Units – Cluster Developments					
Unit	Type	Unit	Type	Unit	Type
1	Market	11	AFFORDABLE	21	Market
2	Market	12	Market	22	Market
3	Market	13	Market	23	AFFORDABLE
4	Market	14	AFFORDABLE	24	Market
5	AFFORDABLE	15	Market	25	Market
6	Market	16	Market	26	Market
7	Market	17	AFFORDABLE	27	AFFORDABLE
8	AFFORDABLE	18	Market	28	Market
9	Market	19	Market	29	Market
10	Market	20	AFFORDABLE	30	Market

The number of Affordable Housing Units required in conjunction with a Project shall be confirmed by the Zoning Board of Appeals. The Applicant shall request such a confirmation of the Board in writing. In such request, the Applicant shall specify the proposed square footage of residential and non-residential floor area and the proposed number of dwelling units in the Project consistent with Section 6.10.6 or Section 6.5.3(b) of the Zoning By-Laws, as applicable. Within 30 days the Zoning Board of Appeals, at a regular meeting, shall determine the number of Affordable Housing Units required in conjunction with a Project and shall so notify the Applicant in writing.

2. Fractional Units

The Applicant shall “round up” to the nearest whole number in the provision of Affordable Housing Units in a Project On-site but may request to make a payment-in-lieu for the fractional unit(s).

3. Location of Units

Affordable Housing Units shall be dispersed throughout the building(s) so as not to be clustered together (i.e., not all of the Affordable Housing Units shall be located on the first floor of a multi-floor building) and shall, on average, be no less accessible to public amenities, such as open space, than the Market-Rate Units. The distribution and number of bedrooms of the Affordable Housing Units shall equal the percent of the Market Rate Unit, i.e. if 10% of the Market Rate Unit are two-bedroom units, then 10% of the Affordable Housing Units should be two-bedroom units as well.

4. Integration

Affordable Housing Units within market rate developments shall be integrated with the rest of the Project and shall be compatible in location, design, room size, bedroom distribution, external appearance, construction, and quality of materials from other units. Interior features of Affordable Housing Units shall comply in all respects to the minimum design and construction standards set forth in the Local Initiative Guidelines by the Division of Housing and Community Development July 1996, as amended.

5. Fees

With respect to Projects involving housing units for ownership rather than rental purposes, the home ownership fees to be charged for each of the housing units, including without limitation condominium association fees, shall be based on each unit’s pro-rata share calculated in a percentage interest by the final sales prices of the housing units and not determined by the size of each housing unit. Any and all future assessments for the condominium shall thereafter be based on that percentage.

6. Accessible Units

The Zoning Board of Appeals, in its discretion and in consultation with the Belmont Housing Trust, may require one or more of the required Affordable Housing Unit(s) to be an Accessible

Unit(s) in any Project, not to exceed 15% of the total number of units, and may designate when the unit(s) shall be provided during the construction process.

7. Sequencing of Construction of Affordable Housing Units

Pursuant to Section 6.10.8 of the Zoning By-Laws, a building permit for a Project shall not be issued prior to the expiration of any appeal period following the issuance of a building permit for the construction of required Affordable Housing Units. Construction of the Affordable Housing Units shall proceed to completion without undue interruption. The Certificate of Occupancy for a Project shall not be issued prior to the Certificate of Occupancy for Affordable Housing Units.

Occupancy permits for any market-rate Housing Units or nonresidential space shall be issued in equal ratio to occupancy permits for required Affordable Housing Units or in-lieu housing payments to the entire Project.

All documents necessary to ensure compliance with this By-Law shall be subject to the review and approval of the Zoning Board of Appeals in consultation with the Belmont Housing Trust and Town Counsel, including without limitation any and all condominium formation documents under MGL Chapter 183A and Deed Restrictions as further discussed below. Such documents shall be executed prior to and as a condition of the issuance of any Certificate of Occupancy.

8. Project Change

If there is subsequently a change in the proposed non-residential square footage or a change in the number of dwelling units in a Project, change in the number of bedrooms therein, or change in the location of units, the Applicant shall so notify the Zoning Board of Appeals and the Belmont Housing Trust in writing. In such circumstances, the Zoning Board of Appeals shall recalculate the number of Affordable Housing Units required and shall so notify the Housing Trust and the Applicant in writing.

9. Deed Restrictions

Deed Restrictions necessary to insure compliance with these Rules and Regulation shall be submitted to Town Counsel, the Zoning Board of Appeals, and to the Belmont Housing Trust for review and approval. The form of deed restrictions shall be substantially in the form attached hereto as Exhibit A. As evidenced in the form, such restrictions shall run with the land in perpetuity. The Applicant shall furnish proof that the restrictions have been recorded at the Registry of Deeds prior to the issuance of a building permit for the Project.

The Deed Restrictions shall be recorded in the first position, superior to mortgages, loans, other liens and encumbrances except for liens to secure payment of real estate taxes and assessments and non-monetary matters which do not, in the opinion of Town Counsel, unreasonably impede the implementation of purposes of the Zoning By-Laws and these Rules and Regulations.

E. PRELIMINARY REVIEW

Prior to submission of an application, the Applicant shall meet with the Belmont Department of Community Development staff and shall provide to the staff the following information:

1. the proposed floor area of the Project in square feet according to the definition of floor area contained in the Zoning By-Laws;
2. the number of dwelling units proposed to be contained in the Project (if any), the size of each dwelling unit and the approximate location of each dwelling unit;
3. separately, the floor area in the Project dedicated to commercial use and the floor area dedicated to residential use;
4. a written statement indicating whether the required Affordable Housing Units are to be provided within the Development Area. There must be a compelling reason otherwise, in which case that reason should be indicated with proposed alternative off-site location(s) or proposed amount of cash payment in lieu. In addition, such written statement shall identify whether such units will be available for ownership or rental;
5. a plan showing the location of the Affordable Housing Units in the Project;
6. a site plan showing any required Affordable Housing Units proposed to be located on a site other than the Development Area; and
7. financial documents, such as pro formas, showing anticipated sales/rental amounts, anticipated fees, etc.

F. PERMITTING

Application for a permit may be made at any time after completion of the Preliminary Staff Review detailed under paragraph E. above or fourteen days after submission of materials for preliminary review whichever occurs sooner.

1. Submission

Submission for a permit shall be made at the Office of Community Development during regular business hours.

2. Application Filing Fee

The Special Permit application filing fee shall be \$500 (in the form of a check made payable to the "Town of Belmont").

3. Application Form

Application shall be made on the form provided attached hereto as Exhibit B.

G. OTHER FACTORS TO CONSIDER

1. Alternate Sites

Pursuant to Section 6.10.7 (4) of the Zoning By-Laws, the Zoning Board of Appeals may allow or require Affordable Housing Units to be provided off-site from the Project at an alternative site in Belmont suitable for residential use. It is the responsibility of the Applicant to propose and provide an alternative site(s), if there is a compelling reason why the affordable unit cannot be provided On-site within the Development Area.

Off-site Housing Units shall be comparable in all respects to the Market Rate Units being created and equal to the number of units otherwise required under these regulations.

The Zoning Board of Appeals shall seek the recommendation of the Belmont Housing Trust relative to any alternate site proposed. The Zoning Board of Appeals shall consider whether the alternate site or sites is comparable to the Development Area, in terms of access on foot to: public transportation, community services, grocery shopping, pharmacy, public or branch library, parks, playgrounds, walking/hiking trails, or other amenities.

Deed Restrictions consistent with the requirements of Section D 8 hereof shall be required in conjunction with any alternate site.

2. Payments-in Lieu

The Zoning Board of Appeals may allow a developer of non-rental Housing Units to make a cash payment to the Town through its Affordable Housing Trust Fund for each required Affordable Housing Unit. The amount of the Cash Contribution shall be determined by the Zoning Board of Appeals in accordance with the provisions of Section 6.10.6 (2), Requirements, of the Zoning By-Laws. The Zoning Board of Appeals shall seek the recommendation of the Belmont Housing Trust relative to any proposal for payment in lieu.

The Town shall hold any payments made hereunder in trust for the exclusive use of affordable housing. The Board of Selectmen or its designee shall serve in the capacity as Trustee for such Affordable Housing Trust Funds.

Checks shall be made payable to "Affordable Housing Trust Fund" and mailed to Treasurer/Collector, Homer Municipal Building, 19 Moore Street, Belmont, MA 02487. Checks shall be accompanied by a letter to the Town Treasurer noting name and address of the Project and that the payment is made to the "Trust Account." A copy of this letter shall be sent to the Inspector of Buildings and the Planning Director.

Upon receipt of the payment, the Town Treasurer shall notify the Office of Community Development, Zoning Board of Appeals, Belmont Housing Trust, and the Inspector of Buildings.

One-half of the payment shall be made prior to the issuance of a building permit for a Project. The remainder of the payment shall be made prior to the issuance of a Certificate of Occupancy for the Project. If a temporary Certificate of Occupancy is sought by the Applicant, 10% of the balance of the remaining payment shall be paid prior to the issuance of such temporary Certificate

of Occupancy, with the remaining balance being paid prior to the issuance of the final Certificate of Occupancy.

3. Contribution of Land

The Zoning Board of Appeals may, in consultation with the Belmont Housing Trust, accept a contribution of land to satisfy the payment-in-lieu requirement. This land contribution shall have been approved by the Belmont Housing Trust. The land shall equal or exceed in value the value of the payment-in-lieu otherwise required, and/or the gifted land can reasonably be used to accommodate the number of Affordable Housing Units required for the Project but not being provided therein. The title to the land is to be held by the Belmont Housing Trust. The land is to be used for the purposes articulated in Chapter 126 of the Acts of 1999.

H. TENANT SELECTION

1. Selection of Tenants/Buyers

At the sole cost of the respective developer of the Project, the Belmont Housing Trust shall coordinate the tenant/buyer selection process according to its own by-laws and the Affordable Marketing Plan adopted by the West Metro HOME Consortium. The Belmont Housing Trust may seek the assistance of others, including the Belmont Housing Authority, in carrying out this function and may specify in advance entities qualified to do so. To the extent allowed by Massachusetts law and legislation, Belmont Residents shall be given preference for 70 percent of the Affordable Housing Units.

2. Re-tenanting and Resale of Units

Upon the vacancy of any Affordable Housing Unit created under the Inclusionary Housing By-Law, the same process shall be used for filling the vacant unit as was used for the selection of the first Qualified Affordable Housing Unit Purchaser or Tenant. Developers may sell affordable for-sale units to the Town of Belmont, the Belmont Housing Trust, the Belmont Housing Authority, or to a private nonprofit entity serving Belmont for the purpose of providing affordable housing opportunities, in order that such entity carry out the steps needed to market the Affordable Housing Units and manage the choice of buyers.

3. Compliance with State and Federal Law

The selection of tenants/buyers shall comply with all applicable state and federal laws and the local fair housing guidelines. The selection of Qualified Affordable Housing Unit Purchaser or Tenant shall be consistent with the guidelines and standards of MGL Chapter 40B, Sections 20-24 and 760 CMR 45.

Exhibit A

Form of Deed Restriction

[Use B Street Project's]

Exhibit B

Application Form